

STATE OF OKLAHOMA
OFFICE OF THE AUDITOR AND INSPECTOR

JEFF A. McMAHAN
State Auditor and Inspector

October 23, 2001

Trent H. Baggett
Assistant Executive Coordinator
District Attorneys Council
2200 Classen Boulevard, Suite 1800
Oklahoma City, Oklahoma 73106-5811

Dear Mr. Baggett:

In your letter of August 28, 2001, you inquired as to the opinion of this agency regarding the payment of professional organization membership dues with budgeted office monies by Oklahoma District Attorneys, more specifically, whether DAs may pay institutional membership dues to the Oklahoma District Attorneys Association from budgeted office monies.

First, I must point out that only the Oklahoma Attorney General has the authority to issue legal opinions on behalf of the State. Opinions issued by this office are merely an expression of how the office of the State Auditor and Inspector would view these issues if we were conducting an audit. They are provided for your information with this understanding.

The principal duties of the office of District Attorney are "to appear in all trial courts and prosecute all actions for crime committed in the district...to prosecute or defend in all courts, state and federal, in any county in this state, all civil actions or proceedings in which any county in the district is interested, or a party...assist the grand jury" (19 O.S. §215.4); "give opinion and advice to the board of county commissioners and other civil officers and boards" (19 O.S. §215.5); and "shall exercise all the powers, duties and functions provided by law for the county attorney" (19 O.S. §215.16).

In addition the courts of this state have found "that generally, an officer or agency has, by implication and in addition to the powers expressly given by statute, such powers as are necessary for the due and efficient exercise of the powers expressly granted, or such as may be fairly implied from the statute granting the express powers." *Marley v. Cannon*, 618 P.2d 405 (1980).

The courts in examining the scope of the authority of officers and agencies regarding the expenditure of public funds have looked to Article X, Sections 14 and 15 of the state constitution. Those provisions constrain spending by establishing a "public purpose" requirement (section 14), and correspondingly prohibit expenditures that constitute gifts (section 15).

The purpose of the Oklahoma District Attorneys Association is to "foster and maintain the honor and integrity of the prosecuting attorneys of the State of Oklahoma ...improve...and facilitate the administration of justice in the State of Oklahoma; and, to...publish and...distribute...treatises and other literary works relating to the legal problems of county government, the prosecution of crime or other related subjects." A comparison of these goals to the duties of the District Attorneys of the State cited above clearly demonstrate that participation in the ODAA by a District Attorney's office meets the public purpose requirement of the constitution.

The other constitutional requirement, that any such payment not constitute a gift, does not appear to be an impediment to a District Attorney's office paying for institutional memberships (as opposed to individual memberships). The constitutional limitations would prohibit District Attorneys from turning public funds over to the ODAA to fund the ODAA's activities.

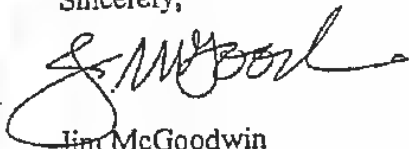
In Attorney General Opinion 98-25 the Attorney General discussed the application of these provisions to a school paying monies to a school foundation; a situation similar to the case you have presented. In that opinion it was stated:

"In order for an appropriation to be validly made to fund a contract with a private entity it must not only be for a public purpose, but it must be made in such a manner as to insure that primary control over expenditures will always lie with the public entity. The private entity must be under a contractual obligation to perform the contract as stipulated by the governmental entity in a manner approved by the governmental entity. The contract must be performed in such a manner as to insure governmental supervision and the public entity must retain the power to terminate its relationship with the private entity if it determines that the private entity has not satisfactorily fulfilled its obligations." (p. 110)

We therefore conclude that it would be neither a violation of the Oklahoma constitution nor state law for a District Attorney's office to pay an institutional membership fee to the Oklahoma District Attorneys Association with budgeted office monies provided that there were sufficient controls in the contract with the Association to insure performance.

If you have any question regarding this issue or I can be of further assistance please contact me.

Sincerely,



Jim McGoodwin

Director Special Audits and Investigations